



LIEUTENANT GOVERNOR'S  
OFFICE

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## STATE OF HAWAII

HISTORIC PRESERVATION DIVISION

555 KAKUHIHEWA BUILDING

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## AGENDA

### MOLOKA'I ISLAND BURIAL COUNCIL MEETING

**DATE:** THURSDAY, JANUARY 20, 2000  
**TIME:** 9:30 A.M.  
**PLACE:** OFFICE OF HAWAIIAN AFFAIRS CONFERENCE ROOM  
KULANA 'OIIWI BUILDING  
P.O. BOX 1717  
KAUNAKAKAI, HAWAII 96748

- I. OPENING REMARKS
- II. APPROVAL OF MEETING MINUTES - NONE SUBMITTED
- III. BUSINESS
  - A. MOLOKA'I RANCH  
**Information/Recommendation:** Update on burial treatment for inadvertent discovery of skeletal remains at Na'iwa.
  - B. MAPULEHU GLASS HOUSE  
**Information/Recommendation:** Discussion of status of case including, but not limited to, land trade and archaeological inventory survey.
  - C. BURIAL SITES PROGRAM  
**Information/Recommendation:** Discussion of Program and Council concerns.
- IV. ANNOUNCEMENTS
- V. ADJOURNMENT

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DEPUTIES  
JANET KAWILO  
LINNEL NISHIOKA

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### MINUTES

#### MOLOKA'I ISLAND BURIAL COUNCIL MEETING

**DATE:** THURSDAY, JANUARY 20, 2000  
**TIME:** 9:30 A.M.  
**PLACE:** OFFICE OF HAWAIIAN AFFAIRS CONFERENCE ROOM  
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#### ATTENDANCE:

**Members:** Lawrence Aki                      Myrle Florea  
Louella Opu'ulani Albino              Edwina Cacoulidis  
Ron Kimball                              Robert Alcain

**Staff:** Ka'iana Markell, Burial Sites Program Director  
Dawn Chang, Deputy Attorney General

**Guests:** Alapa'i Hanapi, Hui Malama I Na Kupuna O Hawai'i Nei  
Mililani Hanapi  
James Mee, Attorney for Arleone Dibben  
Walter Ritte, Jr., Office of Community Services  
Kepanila Kapuni  
Jason Ramias  
Kaili J. Seales  
Akoni Naki, Naki 'Ohana  
Decklan Kekoa  
Scott Kauhane Adams  
Kekamaika'ikawaikalani Helm  
Alika Bumatay  
Zallanina Messa (Kalipi)  
Robert Messa

William Kekahuna, Jr.  
Pilialoa L. Kalaiwa'a  
Buddy Keala, UH-CTAHR  
Donald Kalaiwa'a, Jr.

**ABSENT:** Anna Goodhue Luana Hamakua  
Pilipo Solatario

## **I. OPENING REMARKS**

Chair Ron Kimball (Kimball) called the meeting to order.

## **II. APPROVAL OF MEETING MINUTES - NONE SUBMITTED**

## **III. BUSINESS**

### **A. MOLOKA'I RANCH**

**Information/Recommendation:** Update on burial treatment for inadvertent discovery of skeletal remains at Na'iwa.

Council Member Lawrence Aki (Aki) provided a status update in this matter and indicated that the remains were recovered and reinterred on the same day.

The Department and the council thanked Aki for his assistance in resolving this matter.

### **B. MAPULEHU GLASS HOUSE**

**Information/Recommendation:** Discussion of status of case including, but not limited to, land trade and archaeological inventory survey.

Burial Sites Program Director Ka'iana Markell (Markell) said that Deputy Attorney General Dawn Chang (Chang) and James Mee (Mee), Attorney for Landowner Arleone Dibben (Arleone), are here today and will each talk about their interpretations of the Land Board's current posture regarding a land swap with Mapulehu.

Chang said that this matter was taken to the Land Board at its December 10, 1999, meeting. There were attempts to bring this item before the board earlier, but it holds only one meeting in November and one in December. There were initial discussions with Arleone about the land swap which occurred sometime in October 1999.

Mee explained that one of the reasons is that they went out ahead of time and tried to look at all the other parcels of State land on Moloka'i to see whether any parcel could be possible for a land swap so that took some investigating and time, too.

Chang said that the Department tried to act very timely upon the burial council's request. Soon after the meeting, Arleone did meet with Phil Ohta of our Maui Land Division who went through and provided State lands that were available. We met in November 1999 with Arleone and the

Department representatives as to the various parcels. For many reasons, the parcels weren't conducive to many of the things Arleone wanted to do. At the end of the meeting, it seemed appropriate to bring this issue before the Land Board. It took a while because we wanted to exhaust everything before coming to the Land Board. At the December 10th meeting, the presentation was done by staff, and Mee was also in attendance. There was a lot of discussion, but no formal action was taken by the Land Board because 1) any efforts to condemn the property would require legislative appropriation; 2) the board had a lot of other questions as to the value; and 3) it was the Land Board's policy decision to not support the land swap. Staff felt at that point it was appropriate to bring this matter back to the burial council with the Land Board's position of not supporting the land swap. The Land Board made it very clear to prohibit the burial council or any community organization or Arleone from seeking legislative appropriations for a land swap. They, at this point in time, because of their own budget restraints weren't in favor of extending their resources to do a land swap.

Chang said that when an lawsuit was filed against Ellen Osborne for her disturbance, a burial preserve was established for placement of any iwi that came up. To that extent, whatever damage she did, we believe that was addressed in that action. The last disturbance on the day before Ellen Osborne left is the subject of an ongoing investigation.

Aki asked if any land identified by DLNR or Osborne were viable possibilities? Mee replied that they looked at 12 separate parcels on the island. A lot of the State's land inventory have practical problems (e.g., there wasn't clear access to get to the property, some parcels had utility problems, etc.). There were a couple of parcels they would have looked into more seriously, but before they took this any further, they needed to hear from the Land Board first. When you go through a land swap, there's a complicated process to go through. A valuation must be done so there's a fair exchange of land, the Governor must sign an order saying it's okay, and the legislature must get involved by reviewing and approving the proposal. Chang further explained that State land would be used to exchange with Arleone. She could either sell her land to recoup her investment on the property or exchange the land with somebody else. The Land Board felt uncomfortable with that kind of notion and said that since we're in the middle of a review process, let that take its course.

Mee said that one of the problems we have is that when it rains, the iwi in the push piles erode out and become exposed to the sun. Is there a way for everybody, with the proper protocol, to be in agreement so that we can recover the iwi and put them in the burial preserve area or somehow cover up the iwi in the push piles so they don't get further exposed? That's one thing we all need to get resolved.

Hanapi said that his concern is that he has iwi in his preserve on his land that he wants to put back at Mapulehu.

Mee said that Arleone's concern is that reinterment is done in a way that everybody has the same understanding of how the iwi will be treated in terms of putting them back.

Mee said that when they were looking at the property, the burial preserve and the push piles were already there. When Arleone purchased the property, she thought the iwi was only confined to the burial preserve area. Mee asked if there were iwi in other areas on the property?

Council Member Louella Albino (Albino) said that our kupuna have told us that the entire place has iwi. A land swap shouldn't have even be an option. Arleone shouldn't have even been allowed to purchase that land. What she's doing is pure desecration.

Mililani Hanapi (Mililani) added that the State is aware of lineal descendants who have legal representation. Why aren't they here today and kept in the loop?

Someone from the audience suggested to Mee that he go back to Arleone and tell her that she's lucky she's not in jail. She knew from the beginning there were bones on that land. Ellen Osborne should go to jail, too. We all know in our heart that what she's doing is wrong. A land swap shouldn't even be an option. Stop everything, put back what was destroyed, and everything will be cool. He'd like to see the nene return to Moloka'i but not at the expense of our kupuna.

Kimball said that he'd like to go into executive session in order to consult with our Deputy Attorney General and find out what's going on.

Mililani said that she'd like to see OHA and its counsel and the Native Hawaiian Legal Corporation take more responsibility here.

Chang said that she thinks the State did try to aggressively pursue the Ellen Osborne matter. This is the only case in which the State filed a complaint. We actually sued Ellen Osborne. The case was settled because we felt the settlement was more beneficial. There were concerns about the extent of the burials. Eddie Ayau was very instrumental who was SHPD staff at that time. We believe there were a lot more burials out there. This was one case that the attorney general's office felt very strongly about.

Mililani said that, unfortunately, the settlement was put back into the general fund.

Markell said that there is a bill being proposed at the legislature right now that increases the fine from \$10,000.00 to \$25,000.00 per burial disturbance. What we need to do is figure out how that money, whether its through the legislature or the Department, can be earmarked specifically to address the violation for that site because that's the kupuna that got disturbed. Hawaiians shouldn't be expected to kokua every time there's a disturbance.

Council Member Robert Alcain (Alcain) said that the State did drop the ball in this case. The State didn't take to heart the testimony of our kupuna. We are eliminating that cultural aspect. Do we have to dig up or ancestors to say yeah, we got `em, and put `em all back in, and then ask what are we going to do now? That's the mentality right now.

Someone from the audience asked what can Arleone do on her property right now?

Mee replied that Arleone cannot engage in any ground disturbing activities. There's very little she can do on the property. There's very little going on the property right now. Essentially, it's getting overgrown. Anytime they've done some clearing (where it doesn't disturb the ground), they've been notifying SHPD.

Kimball called a recess. The meeting reconvened resuming with **B. MAPULEHU GLASS HOUSE**.

A motion was made and unanimously approved to go into executive session (**Cacoulidis/Aki**).

**Vote: All in favor.**

The public was asked to leave the room while the council met during executive session. At the end of executive session, Kimball called the meeting to back to order.

A motion was made and seconded that the council does not allow anything to happen on this land at this point in time and does not allow any kind of digging (**Aki/Cacoulidis**).

Aki said that since he's been on the council which has been nearly five years ago, Mapulehu Glass House has been an ongoing issue. Through discussions with many people from the community, as well as through his own research, Mapulehu is known for being a major burial area. Over the years, testimonies given by Alapa'i Hanapi, Collette Machado, the Naki 'ohana, Mr. Otsuka ("Cowboy"), John Sabas, Walter Ritte, and our kupuna, have all said that Mapulehu is a burial ground. Leave it alone. It is beyond us to not pay attention to what our community is telling us and our responsibility to our ancestors. To allow a survey means to allow digging which means hewa. If everybody wants to see the facts, go to Kathryn Summers (sic). Read her books. She's done an extensive study on Moloka'i; specifically, Mapulehu. There's enough information for all of us to clearly understand that what was shared to us orally in all these meetings for the last five years is also confirmed in writing by Kathryn Summers. Aki said that it would be wrong for the council to allow anybody to dig because of a survey.

Alcain said that besides the oral history expressed by our kupuna, there's also visual evidence of iwi found at Mapulehu. He agrees with Aki's motion.

Aki suggested that Mee go back to Arleone and ask her how she couldn't have known what was there when she purchased the land. The majority of the community would love to see the nene project happen. It's unfortunately in the wrong place. She made a bad decision. Now the council needs to make a right decision.

**Vote: All in favor.**

Alapa'i Hanapi (Hanapi) said that he agrees with the council's motion and that nothing should happen at Mapulehu. If there's any way we could work something out, he's receptive to that. Good project, wrong place.

Mee stated on behalf of Arleone that regarding the burial treatment plan she submitted, all of the property records from the time it was operated by the Sugar Planters Association and even before that when it was a dairy operated by George Cook were researched. Those records show the stuff that was planted there and its history. No where in those records is there any reference to the fact that iwi was found on the property. From Arleone's perspective, she relied on those records -- whether they were accurate or not -- but that's a large part of what she based her decision on when she was researching the history of the property. She was aware of the burial easement and burial ground but not aware there might be iwi on other areas of the property. Maybe if she had talked to the kupuna, she would've heard a different story. Mee said that Arleone didn't want to cause problems. Mee said it's his understanding that Arleone had talked to people in the community and asked if there would be a problem having a nene project in that area. Arleone told him that the response she received was no and people in the community didn't think there would be a problem. Now, these discussions occurred before Ellen Osborne dug that puka and found iwi. As a result, the whole situation changed. Mee agrees that he'd like to resolve this to make everybody happy but doesn't know if that's possible.

Kimball said that Mee has brought up a concern about the iwi exposed in the push piles, and one of the goals mentioned by Chang is whether we can come up with any ideas to resolve this issue.

Aki suggested to Mee that we need to get in there, take care of that, and move on. We can talk about legalities, etc., but the issue at hand is when will our kupuna be taken care of? Aki suggested that we all work together to take care of that pile and our kupuna, and then we can leave it alone. Whether Arleone intends to take it any further, that will be her kuleana. Mee asked what's the best way -- preserve the iwi in place, or put the iwi in the burial preserve? Hanapi explained that because of how the iwi were disturbed and fragmented, they have to go back where they came from. Hanapi's understanding is that the burial easement was specifically for kupuna that was dug up in that area. Hanapi said that he still has possession of a mandible from a kupuna wahine that was dug up by the ginger patch puka on the eastern side of the property that must be reinterred there. The push pile ones will take time. That can be done secondary or at the same time, but we have to do the kupuna that was brought up recently. The push pile will be a little harder. The delineation of the easement was not because that's the end of the burials. It's because that's where he decided they should stop before we get into a whole bunch of stuff here because then we would have 80 or 100 come up instead of the 60 we calculated. First, we should put the kupuna back in the ginger patch. There's three different areas where bones came up in that area -- one by the old road driveway that came in, one in the ginger patch area, and the one by the shade pole.

Mee said that attention should be given to the push piles because that may continue to be a problem due to bones eroding out. On the ginger patch puka, it seems to make sense to put everything back in the puka. It's a question of how wide an area we set for that.

Hanapi said that they reinterred what was left of her and said he'd rather leave that area alone and would rather mound like they did on the other side instead of taking the chance of bringing more iwi up. Then we're talking about a buffer. Then there's the fact of the anchor pole with the iwi remains inside that came from the same area but not from the grave from the kupuna wahine.

Then there's another place over by the driveway where there were some skull fragments that came up because of the construction. We have a mess here.

Aki suggested that all the parties, including Sara Collins and any recognized lineal/cultural descendants, schedule a site visit on the property in the very near future so this situation can be assessed. From there, we can move ahead.

Albino asked Mee to communicate to Arleone that should iwi appear in the future, that she contact Hui Malama instead of DOCARE because too many people are handling the iwi. Mee said that they turned iwi over to DOCARE because they were following instructions. Chang suggested that maybe our DOCARE people can contact Hanapi. Everyone agreed.

Kimball asked Mee if he could communicate to Arleone that the iwi needs to be reinterred where they came from and not in the easement. We should take care of the kupuna wahine iwi first and then take care of the push piles and then schedule the site visit.

Mee asked Hanapi if he had iwi that came from the push piles, too? Hanapi replied yes. The iwi he has come from other areas, too.

Kimball asked Mee to make it clear to Arleone that this has nothing to do with a burial plan or survey that was brought up. The only reason why we're going on the property now is to put the iwi back from the push piles and what's in Hanapi's possession.

Markell said that there's a question as to what power do we have as the State to tell somebody he can't fix a roof in his house or he can't plant tomatoes on his property. We don't want burials to be disturbed. If Arleone chooses to dig a hole and as a result disturbs a burial, she may be prosecuted if we can show that she had reason to know that burial was there and she intentionally did it, but that's an argument. His advice is don't do anything until we can resolve it, but the State is saying you can't do anything.

Chang clarified that the State is not prohibiting Arleone from using her property. If she finds a burial, there are laws that apply to that. The recommendation was don't do any ground disturbing because there may be some burials. If she's not requesting any permit that triggers an approval from the Department, she's free to do what she wants on the property. There's nothing that prohibits her from doing anything on the property other than if she does find something.

Hanapi said that he still feels uncomfortable because when there has been evidence showing a history of uncovering and desecrating burials, he thinks this is a unique situation, and the State should take into consideration and not just say Arleone can use the property any way she desires.

Mee said that if we want to resolve this by making sure the land is preserved, it may mean we all have to go to the legislature or OHA and be thinking as a group and cooperate to do that.

**C. BURIAL SITES PROGRAM**

**Information/Recommendation:** Discussion of Program and Council concerns.

No discussion took place.

**IV. ANNOUNCEMENTS**

None.

**V. ADJOURNMENT**

There being no further business, Kimball adjourned the meeting.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michelle K. Bradley", with a long, sweeping horizontal line extending to the right.

Michelle K. Bradley  
Historic Sites Preservation Specialist